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General Insolvency Counsel for
Debtor and Debtor-in-Possession

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – NORTHERN DIVISION

In re:

GLOBAL PREMIER REGENCY PALMS
OXNARD, L.P., a California limited
partnership,

Debtor and
Debtor-in-Possession.

Case No. 9:22-bk-10626-RC

Chapter 11 Proceeding

**DEBTOR'S MOTION FOR ORDER
AUTHORIZING DEBTOR TO ENTER INTO
ASSESSMENT CONTRACT AND OBTAIN
POST-PETITION LOAN SECURED
AGAINST REAL PROPERTY;
MEMORANDUM OF POINTS AND
AUTHORITIES**

**[DECLARATION OF CHRISTINE HANNA
IN SUPPORT HEREOF FILED
CONCURRENTLY HERewith]**

[11 U.S.C. §§ 363(b) and 364(d)(1)]

DATE: TBD

TIME: TBD

PLACE:¹ Courtroom 201
1415 State Street
Santa Barbara, CA 91301

¹ The hearing on the Motion will be scheduled to be heard via Zoom. Please check the Court's calendar just prior to the hearing to confirm. <http://ecf-ciao.cacb.uscourts.gov/CiaoPosted/>.

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TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES	3
I. INTRODUCTION	3
II. STATEMENT OF FACTS	3
A. Background of Debtor.....	3
B. Secured Debt.....	5
C. PACE Financing	5
D. The Assessment Contract (Debtor-in-Possession Financing)	6
1. Uses of Post-Petition Financing.....	6
2. Summary of Proposed Financing Terms.....	7
III. THE COURT SHOULD APPROVE AND AUTHORIZE THE DEBTOR TO ENTER INTO THE ASSESSMENT CONTRACT	9
A. Section 363(b) of the Bankruptcy Code Authorizes the Debtor to Enter into the Assessment Contract	9
B. The Debtor’s Notice to Creditors of its Intention to Enter into the Assessment Contract is Sufficient to Satisfy the Requirements of Section 363(b)	10
C. To the Extent Court Approval is Necessary, the Debtor’s GP should be Authorized to Amend the Debtor’s Limited Partnership Agreement and the GP Operating Agreement to Comply with Certain Requirements of the DIP Lender	12
IV. THIS COURT MAY APPROVE AND AUTHORIZE THE DEBTOR TO ENTER INTO A POST-PETITION SECURED FINANCING ARRANGEMENT.....	13
A. The Bankruptcy Code Authorizes the Debtor to Obtain Secured Financing.....	13
B. California Law Provides the CSCDA with a Lien Senior to Pre-Existing Private Liens for Loans Made Pursuant to Contractual Assessments	14
V. DIP LENDER IS ENTITLED TO A GOOD FAITH DETERMINATION PURSUANT TO SECTIONS 364(e)	18
VI. THE COURT SHOULD DESIGNATE CHRISTINE HANNA AS THE PERSON IN CONTROL OF THE DEBTOR PURSUANT TO 11 U.S.C. § 1107(a) AND F.R.B.P. 9001(5)	19
VII. CONCLUSION.....	21

TABLE OF AUTHORITIES

Cases

<u>In re Adam’s Apple,</u> 829 F.2d 1484, 1489 (9th Cir. 1987)	18
<u>In re American Media Distribs., LLC,</u> 216 B.R. 486, 489 (E.D.N.Y.1998)	13
<u>Anchor Sav. Bank FSB v. Sky Valley, Inc.,</u> 99 B.R. 117, 122 (N.D.Ga. 1989)	14
<u>Bank v. Bell (1923)</u> 62 Cal.App. 320	16
<u>Bland v. Farmworker Creditors,</u> 308 B.R. 109, 113 (S.D. Ga. 2003) quoting 2C Bankr.Service L.Ed. § 20:380 (Nov.2003).....	14
<u>Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.),</u> 722 F.2d 1063, 1069 (2d Cir. 1983).....	9
<u>In re Continuum Care Services, Inc.,</u> 375 B.R. 692, 694 (Bankr.S.D.Fla. 2007)	20
<u>In re Cooper Commons, LLC,</u> 424 F.3d 963, 969 (9th Cir. 2005) (opinion amended and superseded by 430 F.3d 1215, 1219 (9th Cir. 2005)).....	18
<u>In re Copy Crafters Quickprinting, Inc.,</u> 92 B.R. 973, 983 (Bankr. N.D.N.Y. 1988)	11
<u>In re Crystal Apparel,</u> 220 B.R. at 830 (citing <u>In re Caldor</u> , 193 B.R. 182, 186 (Bankr. S.D.N.Y. 1996)).....	11
<u>In re Curlew Valley Associates,</u> 14 B.R. 506, 513-514 (Bankr. D.Utah 1981).....	10
<u>Daggett v. Colgan</u> (1891) 92 Cal.53	16
<u>In re Derivium Capital, LLC,</u> 2010 WL 11719990, at *3 (Bankr.D.S.C. 2010)	20
<u>Dressman v. Farmers’ & Traders National Bank of Covington</u> (1897) 38 S.W. 1052.....	17

1	<u>Frostbaum v. Ochs,</u>	
2	277 B.R. 470, 475 (E.D.N.Y. 2002)	10
3	<u>German Savings & Loan Soc’y v. Ramish (1902)</u>	
4	138 Cal. 120, 125	17
5	<u>In re Girard Medical Center,</u>	
6	1990 WL 56486, *2 (Bankr. E.D.Pa. 1990).....	9
7	<u>Hollenbeck-Bush Planing Mill Co. v. Amweg (1917)</u>	
8	177 Cal. 159	17
9	<u>In re Industrial Valley Refrig. and Air Cond. Supplies, Inc.,</u>	
10	77 B.R. 15, 21 (Bankr. E.D. Pa. 1987)	11
11	<u>In re Iorizzo,</u>	
12	35 B.R. 465, 467 (Bankr.E.D.N.Y. 1983).....	20
13	<u>In re James A. Phillips, Inc.,</u>	
14	29 B.R. 391, 394 (S.D.N.Y. 1983).....	11
15	<u>In re JFD Enterprises, Inc.,</u>	
16	215 F.3d 1312, 2000 WL 560189, *5 (1st Cir. 2000).....	10
17	<u>In re Johns–Manville Corp.,</u>	
18	801 F.2d 60, 64 (2d Cir.1986).....	13
19	<u>In re Levinson Steel Co.,</u>	
20	117 B.R. 194, 196 (W.D. Pa. 1990).....	11
21	<u>Lionel</u>	9
22	<u>In re Marvel Entm’t Grp., Inc.,</u>	
23	209 B.R. 832 (D. Del. 1997).....	12
24	<u>Matter of EDC Holding Co.,</u>	
25	676 F.2d 945, 947 (7th Cir.1982)	18
26	<u>Matter of Gaslight Club, Inc.,</u>	
27	782 F.2d 767, 771 fn. 6 (7 th Cir. 1986)	20
28	<u>New Haven Radio, Inc. v. Meister (In re Martin-Trigona),</u>	
	760 F.2d 1334, 1346 (2d Cir. 1985).....	9
	<u>In re Northwest Associates, Inc.,</u>	
	245 B.R. 183, 186 (Bankr.E.D.N.Y. 1999).....	20

1	<u>O'Dea v. Mitchell (1904)</u>	
2	144 Cal. 374]	17
3	<u>Pesmen v. Bannockburn Lake Office Plaza Associates Ltd. Partnership I,</u>	
4	1999 WL 356307, at *4 (N.D.Ill. 1999)	13
5	<u>Redevelopment Agency of the City and County of San Francisco v. Pacific Vegetable Oil Corp.</u>	
6	(1966) 241 Cal. App.2d 606	17
7	<u>Savings in Jersey City v. Mayor and Alderman of Jersey City (1885)</u>	
8	113 U.S. 506	16, 17
9	<u>In re Simasko Production Co.,</u>	
10	47 B.R. 444, 449 (Bankr. D.Colo. 1985)	10
11	<u>Stephens Indus., Inc. v. McClung,</u>	
12	789 F.2d 386, 390-91 (6th Cir. 1986)	9
13	<u>In re Thinking Machs. Corp.,</u>	
14	182 B.R. 365, 368 (D.Mass.), <i>rev'd on other grounds</i> , 67 F.3d 1021 (1st Cir.1995)	10
15	<u>In re Wheeling-Pittsburgh Steel Corp.,</u>	
16	72 B.R. 845, 849 (Bankr. W.D.Pa. 1987)	9
17	<u>In re WPRV-TV,</u>	
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20	34 Cal.2d 465 (quoting <u>U.S. v. City of New Orleans</u> (1878) 98 U.S. 381	16

Statutes

11 U.S.C. § 362.....	12
11 U.S.C. § 363.....	12
11 U.S.C. § 363(b).....	1, 9, 11
11 U.S.C. § 364.....	13
11 U.S.C. § 364(d).....	14
11 U.S.C.A. § 364(d).....	14
11 U.S.C. § 364(d)(1).....	1, 2, 7
11 U.S.C. § 364(e).....	2, 18, 19
11 U.S.C. § 1107(a).....	1, 19, 21
11 U.S.C. § 1107(a).....	19
11 U.S.C. § 1108.....	9

Other Authorities

10 Collier on Bankruptcy ¶ 9001.06 (16th 2023).....	20
Collier on Bankruptcy, Rule 9001(5).....	20
2 Bankruptcy Litigation § 12:5.60 (2022).....	13
Bankr. Proc. Manual § 9001:1 (2023 ed.).....	20
California Streets & Highways Code §5105.....	15
California Streets and Highways Code - Chapter 29, Part 3 of Division 7.....	5
California Streets and Highways Code - Chapter 29, Section 5898.14.....	16
California Streets and Highways Code - Chapter 29, Section 5898.30.....	14, 15
California Streets and Highways Code Sections 8500.....	6, 14
California Streets & Highways Code §10100.2.....	15
California Streets & Highways Code §10100.3.....	15
Chou, Corporate Governance in Chapter 11, 65 Am. Bankr. L.J. 559, 577 (1991).....	20
Gov. Code - Article 13.5 of Chapter 4 of Part 1 of Division 2 of Title 5 Section 53938.....	15
Gov. Code §53313.5(i).....	16
Gov. Code §53313.5(ii).....	16
Gov. Code §53313.5(j).....	16
Improvement Bond Act of 1915.....	6
Improvement Act of 1911.....	15, 16
James Buchwalter, Construction and Application of Bankruptcy "Superpriority Lien" or "Priming Lien" Provision, 11 U.S.C.A. § 364(d), 63 A.L.R. Fed. 2d 563 (2012).....	14
Lien Priority Law Section 53935.....	15
Mello-Roos Community Facilities Act of 1982.....	16
Municipal Improvement Act of 1913.....	15, 16
Public Resources Code Section 26500.....	16
Revenue & Taxation Code §2192.1.....	15, 17

Rules

Fed. R. Bankr. P. 4001.....	7
Fed. R. Bankr. P. 9001(5).....	1, 19, 20, 21
Local Bank. Rule 4001-2.....	7

1 Global Premier Regency Palms Oxnard, LLP, a California limited liability partnership, the
2 debtor and debtor-in-possession in the above Chapter 11 proceeding (the “Debtor”), hereby moves
3 this Court (the “Motion”), pursuant to the provisions of Sections 363(b) and 364(d)(1) of the
4 Bankruptcy Code, for an Order in a form substantially similar to the order attached as **Exhibit 1** to
5 the Declaration of Christine Hanna (“Hanna Declaration” filed concurrently herewith, granting the
6 following relief:

7 1. Authorizing the Debtor to enter into with the California Statewide Community
8 Development Authority (the “CSCDA”), as the California joint exercise of powers authority that
9 operates the California Open PACE Program, and White Oak Global Advisors, LLC (“White
10 Oak”), as the PACE Administrator (collectively, the “DIP Lender”), the Assessment Contract in
11 substantially the same form attached as **Exhibit 2** to the Hanna Declaration, and any additional
12 agreements, documents, instruments, and certificates in connection therewith and necessary or
13 desirable to perform all obligations contained therein (collectively, the “Assessment Contract”);

14 2. Authorizing the Debtor to obtain post-petition PACE assessment financing in an
15 aggregate maximum principal amount of up to \$12,800,000 (the “DIP Financing”), pursuant to the
16 terms and conditions of the Assessment Contract and any orders entered in connection therewith,
17 or otherwise delivered in connection therewith;

18 3. To the extent Court approval is necessary, authorizing the Debtor’s General Partner
19 to amend the Debtor’s Limited Partnership Agreement and authorizing the General Partner to
20 amend its Operating Agreement in order to comply with certain requirements of the DIP Lender;

21 4. Designating Christine Hanna as the person in control of the Debtor with authority to
22 act on behalf of the Debtor, pursuant to 11 U.S.C. § 1107(a) and F.R.B.P. 9001(5), and in
23 particular, authorizing Christine Hanna on behalf of the Debtor to execute and deliver the
24 Assessment Contract and all such other documents and to perform such other and further acts as
25 may be necessary or desirable in connection with the Assessment Contract and the closing of the
26 DIP Financing pursuant thereto;

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The proposed DIP Financing is critical to the Debtor's ability to emerge from Chapter 11 and pave the way to pay its creditors. The Debtor cannot afford to incur the expense of litigating an anticipated hotly contested plan confirmation process, nor face the risk of the severe consequences (losing all of its assets to its senior secured creditor) in the event it was unable to successfully confirm a plan of reorganization. The Debtor has reached an agreement with its senior secured creditor, JKO Group, LLC ("JKO"), which provides for a restructuring of the Debtor's obligations, and requires the DIP Financing.¹ The agreement with JKO eliminates the risks and significant costs associated with plan confirmation in this case, and paves the way for prompt emergence from Chapter 11 and payment to creditors. In order to effectuate the JKO compromise and disposition of this case, the Debtor must promptly obtain DIP Financing. The Debtor believes that approval and use of the DIP Financing provides creditors with the greatest opportunity for payment, and thus is in the best interest of creditors.

II.

STATEMENT OF FACTS

A. Background of Debtor

The Debtor was formed in 2014 to purchase land and develop and operate an assisted living/memory care facility in Oxnard, California. Global Premier America #3, LLC ("GP") is the general partner of the Debtor and has complete control over the decision making of the Debtor.² Pursuant to the GP's Operating Agreement and amendments thereto, the Managers of the GP, which are defined as Christine Hanna and Andrew Hanna, together or separately, each have full

¹ The Debtor will be filing a motion for approval of compromise with JKO and dismissal of case to be heard at or about the same time as the final hearing on this motion.

² See, e.g., Section 10(a) (General Partner shall be solely responsible for the day-to-day operations of the Partnership business and shall have all rights and powers generally conferred by law or necessary, advisable or consistent in connection therewith, or in connection with accomplishing the purposes of the Partnership as set forth in Section 3). A true and correct copy of the Debtor's limited partnership agreement is attached as **Exhibit 3** to the Hanna Declaration.

1 authority to manage and operate the GP.¹ Thus, Christine Hanna has authority to manage and
2 operate the GP, and thus, manage and operate the Debtor. In practice, Christine Hanna has and
3 continues to be the “person in control” of the Debtor. Accordingly, Christine Hanna had authority
4 to file, on behalf of the Debtor, a petition for relief under Chapter 11 of the Bankruptcy Code,
5 enter into the proposed DIP Financing, and file this Motion.

6 The Debtor was initially funded with \$10 million of investment from foreign investors,
7 who invested in the Debtor pursuant to a program of the United States government to allow
8 foreign investors to make investments in the United States in order to obtain residency status.
9 This program is designed to stimulate the U.S. economy through job creation and capital
10 investment. The Debtor’s successful completion and operation of this project will preserve jobs,
11 provide creditors and equity with the greatest possibility for recovery, and provide the foreign
12 investors with the ability to obtain residency in the United States.

13 The Debtor owns and since January 2021, with its wholly owned non-debtor subsidiary,
14 Global Regency Oxnard Senior Care Services LLC, a California limited liability company, dba
15 Regency Senior Living, operates an assisted living/memory care facility located at the Property.
16 Regency Senior Living provides housing and a full spectrum of care and services to fragile seniors
17 in need of a moderate level of medical assistance, including specialized memory care for seniors
18 who suffer from Alzheimer’s Disease and other forms of dementia. The Debtor’s subsidiary
19 employs approximately 60 persons. The Debtor’s sole revenue source is the rental income and
20 distributions, if any, from its sole tenant, Regency Senior Living. Since the Debtor’s completion
21 of the development of its Property and Regency Senior Living’s commencement of its operations
22 is in the relative early phase of a start-up, Regency Senior Living does not yet generate sufficient
23 profits to pay rent to the Debtor. Accordingly, the Debtor cannot currently pay its obligations to
24 JKO.

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28 ¹ See, for example, sections 1.7 and 2(e) of the First Amendment to Operating Agreement of Global Premier America
#3, LLC. A true and correct copy of the GP’s Operating Agreement and amendment thereto are attached collectively
as **Exhibit 4** to the Hanna Declaration.

1 **B. Secured Debt**

2 On June 27, 2018, the Debtor obtained a loan from Nano Banc in the amount of
3 \$15.5 million to purchase the Property and build and operate an assisted living/memory care
4 facility at the Property. The Nano Bank loan was evidenced by, among other things, a
5 Construction Loan Agreement and Promissory Note. In connection with the loan, the Debtor
6 provided a Deed of Trust in favor of Nano Bank. Nano Bank also filed a UCC-1 financing
7 statement dated August 30, 2018 with the California Secretary of State.

8 On March 23, 2020, the loan agreement was modified to increase the amount of the Loan
9 to \$23 million. The Debtor also executed a Commercial Security Agreement, pursuant to which
10 the Debtor granted a security interest in collateral, including inventory, accounts (including but
11 not limited to all health-care-insurance receivables), and cash. On November 19, 2020, the parties
12 modified the loan agreement to increase the loan from \$23 million to \$25.5 million, and assign a
13 deposit account in the amount of \$500,000 held at Nano Bank as additional security.

14 On or about April 22, 2022, Nano sold and assigned to JKO 100% of Nano's interests in
15 its claims against the Debtor. As of the Petition Date, JKO asserts a secured claim against the
16 Debtor's Assets in the amount of approximately \$28 million. As of the Petition Date, the Debtor
17 had \$64.31 in cash and \$7,317.87 in accounts receivable from Regency Senior Living.

18 Top Tier Painting and ArtMex Artistic Design, Inc. also assert secured claims against the
19 Property in the amounts of \$87,147 and \$22,660, respectively. These asserted secured claims are
20 based on alleged mechanics lien rights arising from contracting services provided to the Debtor.

21 **C. PACE Financing**

22 The CSCDA established the CSCDA Open PACE Program to allow the financing or
23 refinancing of certain distributed generation renewable energy sources, energy efficiency
24 improvements, water efficiency improvements, seismic strengthening improvements, electric
25 vehicle charging infrastructure and such other work, infrastructure or improvements as may be
26 authorized by law from time to time that are permanently fixed to real property (collectively, the
27 "Authorized Improvements") through the levy of contractual assessments pursuant to Chapter 29
28 of Part 3 of Division 7 of the Streets and Highways Code ("Chapter 29") and the issuance of

improvement bonds under the Improvement Bond Act of 1915 (Streets and Highways Code Sections 8500 and following) upon the security of the unpaid contractual assessments. The CSCDA provides financing to property owners only for Authorized Improvements. The CSCDA obtains its source of financing and refinancing of the installation of Authorized Improvements from proceeds of California Statewide Communities Development Authority Open PACE limited obligation improvement bonds.

The semi-annual payment obligations required to be paid by borrower are called “Assessments,” and are actually included in, and become part of, the building owner’s real property tax bill. Pursuant to California statute, the Assessments are secured by a statutory lien against the borrower’s real property, coequal to and independent of the county’s real property tax lien, senior in priority to all existing secured creditors. California law provides for the sale of the borrower’s real property to collect delinquent installments and related penalties, interest and costs; amounts that have not yet been billed may not accelerated. The CSCDA’s lien shares para passu priority with the County for any unpaid property taxes.

D. The Assessment Contract (Debtor-in-Possession Financing)

The Debtor has applied with, and been qualified by, the CSCDA for PACE financing of up to \$12,800,000 from the CSCDA’s program administrator, White Oak. An affiliate of White Oak will purchase the limited obligation improvement bonds sold by the CSCDA to provide financing to the Debtor. In order to obtain the PACE financing, the Debtor seeks authority to enter into the Assessment Contract in substantially the same form as attached to **Exhibit 2**.

1. Uses of Post-Petition Financing

The following is a summary of the estimated uses of the PACE financing:

Pace Related Disbursements:

Capitalized Interest Reserve for PACE Loan:	\$ 2,170,000
PACE Loan Expenses	386,471
Administrative Expenses	750,000
Working Capital for Debtor	150,000
Past due property taxes	102,581

JKO Related Disbursements:

Interest Reserve for JKO post-confirmation	1,068,000
Payment on Debt Owing to JKO	<u>8,172,948</u>
Total	\$12,800,000

The DIP Financing will enable the Debtor to restructure its debt with JKO and emerge from Chapter 11, thereby paving the way for the Debtor to pay its creditors.

2. Summary of Proposed Financing Terms¹

The following is a summary of the material terms pursuant to which DIP Lender has agreed to advance funds to the Debtor.

Financing Amount:	The lesser of (i) \$12,800,000 or (ii) 30% of Property's as-stabilized value as determined by DIP Lender in its sole discretion (the "Financing Amount").
Interest Rate:	Fixed rate throughout the Term to be equal to the greater of: (A) 7.50%; and (B) The 10-year U.S. Treasury benchmark rate plus 3.50%
Transaction Fee:	On the Closing Date from Financing proceeds, Owner would pay to capital provider a transaction fee equal to 1.00% of the Financing Amount.
Priority/Security:	Debtor would agree to a contractual assessment on the Property that would be recorded with the local tax authority. Delinquent assessments are subject to the same process and penalties as property taxes. No personal or corporate guarantees are required for the DIP Financing. All delinquent Assessment Obligations shall be secured against the Property pursuant to California law and §364(d)(1).
Use of Proceeds	The Financing will utilize the CSCDA's three-year lookback period to refinance PACE-eligible improvements already completed to the Property. Accordingly, proceeds remaining after funding (i) Capitalized Interest and (ii) fees and costs associated with the DIP Financing may be used in accordance with Debtor's plan of reorganization (the " <i>Net Proceeds</i> "), including to repay existing indebtedness and/or fund operations. The Debtor may use the proceeds from the DIP Financing as set forth in the DIP Order and the cash flow budget attached as Exhibit 3 to the Weissman Declaration.
Target Closing Date:	July 14, 2023, with the actual date of closing being defined as the "Closing Date."
Term:	The lesser of (i) 30 years and (ii) the cost-weighted expected useful life of funded improvements.
Interest Only Period:	Approximately seven years and two months, including the Capitalized Interest period. The exact length would be dependent upon the Closing Date.
Capitalized Interest:	Approximately \$2,050,000 would be funded into a trust account at closing from the DIP Financing proceeds and used to pay interest accrued from the Closing Date to September 2, 2025. The actual amount of Capitalized Interest would vary depending on the Closing Date.
Assessment Payments:	Assessment Payments will be due concurrently with ad valorem property taxes every December 10 and April 10, starting with December 10, 2025 (the " <i>Payment Dates</i> ") (Assessment Payments are not due before December 10, 2025 because interest on the DIP Financing will be capitalized through September 2, 2025). On Payment Dates up to and including September 2, 2030, no principal repayments will be required. Starting on December 10, 2030 and throughout the remaining Term, the Debtor would be required to make payments of approximately \$588,000 on each Payment

¹ See also Statement Regarding Cash Collateral or Debtor in Possession Financing [FRBP 4001; LBR 4001-2] filed concurrently herewith.

	Date.																								
Prepayment Premium:	Prepayment of the DIP Financing would be subject to the following premiums: Year 1: 5.0% Year 2: 3.0% Years 3-4: 1.0% Thereafter: None																								
Setup and Servicing Fee:	The following would be due in full and in cash so long as the DIP Financing has not been repaid in full: <ul style="list-style-type: none"> On the Closing Date, the Debtor would pay White Oak a Setup Fee equal to \$1,500. The Debtor would also pay to White Oak an annual Servicing Fee equal to \$1,750 per year, payable in advance with pro rata installments due on the Closing Date and each Payment Date thereafter. Each of the foregoing fees, once paid, would be non-refundable for any reason whatsoever. 																								
Other Fees and Expenses:	The Debtor would be required to pay White Oak's due diligence, legal and other related out-of-pocket DIP Financing expenses. The Debtor would also be responsible for any fees and expenses charged by CSCDA, Depositary Agent, Disbursement Agent, Bond Indenture Trustee, or other third party, including their legal fees. All such amounts would be eligible uses of DIP Financing proceeds. The following are White Oak's good-faith estimates but are subject to final determination by each respective party: <p><u>One-Time Costs of Issuance:</u></p> <table> <tr> <td>CSCDA Bond Issuance Fee</td><td>0.750% of Net Proceeds</td></tr> <tr> <td>CSCDA Legal Counsel</td><td>0.500% of Net Proceeds</td></tr> <tr> <td>PACE Program Fee</td><td>0.500% of Financing</td></tr> <tr> <td>Ventura County Recording Fee</td><td>\$500</td></tr> <tr> <td>White Oak Legal Counsel</td><td>\$30,000</td></tr> <tr> <td>Appraisal Roll-Forward</td><td>\$2,500</td></tr> <tr> <td>Miscellaneous Due Diligence</td><td>\$5,000</td></tr> </table> <p><u>Recurring Expenses:</u></p> <table> <tr> <td>Ventura County Admin Fee</td><td>0.250% surcharge to each payment</td></tr> <tr> <td>Assessment Administrator</td><td>\$11,200 setup, plus \$275 per year</td></tr> <tr> <td>Depositary Agent</td><td>\$500 upfront, plus \$1,000 per year</td></tr> <tr> <td>Disbursement Agent</td><td>\$500 upfront, plus \$500 per year</td></tr> <tr> <td>Bond Indenture Trustee</td><td>\$2,500 setup, plus \$1,750 per year</td></tr> </table>	CSCDA Bond Issuance Fee	0.750% of Net Proceeds	CSCDA Legal Counsel	0.500% of Net Proceeds	PACE Program Fee	0.500% of Financing	Ventura County Recording Fee	\$500	White Oak Legal Counsel	\$30,000	Appraisal Roll-Forward	\$2,500	Miscellaneous Due Diligence	\$5,000	Ventura County Admin Fee	0.250% surcharge to each payment	Assessment Administrator	\$11,200 setup, plus \$275 per year	Depositary Agent	\$500 upfront, plus \$1,000 per year	Disbursement Agent	\$500 upfront, plus \$500 per year	Bond Indenture Trustee	\$2,500 setup, plus \$1,750 per year
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Representations and Warranties:	Customary for transactions of this type as determined by White Oak, together with such others as may be required by White Oak following completion of its due diligence.																								
Property Insurance:	The Debtor shall maintain insurance satisfactory to White Oak with respect to Property from an insurer acceptable to White Oak; however, Owner shall not be required to purchase earthquake insurance for the Property.																								
Collateral Appraisals:	While any PACE obligations from the DIP Financing remain outstanding, White Oak may periodically require Property appraisals for its internal accounting or other purposes. Upon White Oak's reasonable request, the Debtor will cooperate with such collateral appraisal firm selected and paid for by White Oak.																								
Events of Default; Remedies:	Customary for transactions of this type as determined by White Oak. Remedies shall be the maximum rights permitted by California law and consistent with the enforcement of delinquent property taxes under California law, including judicial foreclosure of delinquent Assessment Payments.																								
Conditions Precedent:	Customary for transactions of this type as determined by White Oak, together with such others as may be required by White Oak following completion of its due diligence. Without limiting the generality of the foregoing, White Oak currently																								

	expects the following Conditions Precedent to be completed satisfactorily in its sole discretion: (i) Roll-forward of the existing Property appraisal; (ii) Environmental review of Property; (iii) Site inspection; (iv) ASHRAE II or equivalent energy study for the Property; (v) Legal due diligence; (vi) The Debtor's contemporaneous or prior exit from bankruptcy, with a pro forma, as-stabilized DSCR of 1.20x, credible plan for funding cash burn needed to reach stabilization, and other terms and conditions to be determined by White Oak; (vii) White Oak's KYC process; (viii) Financing Documents; and (ix) Effectiveness of the PACE special tax assessment.
Other Fees and Expenses:	All legal, valuation, appraisal, due diligence and other fees and expenses incurred by White Oak would be paid by the Debtor.
Governing Law:	The loan documents would be prepared by CSCDA's bond counsel and legal counsel to White Oak and would be governed by the internal laws of the State of California without regard to principles of conflicts of law.

III.

THE COURT SHOULD APPROVE AND AUTHORIZE THE DEBTOR TO ENTER INTO THE ASSESSMENT CONTRACT

A. Section 363(b) of the Bankruptcy Code Authorizes the Debtor to Enter into the Assessment Contract

Section 363(b) empowers a debtor in possession to "use, sell, or lease . . . other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). A bankruptcy court's power to authorize a transaction under Section 363(b) is to be exercised at the court's discretion. In re WPRV-TV, 983 F.2d 336, 340 (1st Cir. 1993), New Haven Radio, Inc. v. Meister (In re Martin-Trigona), 760 F.2d 1334, 1346 (2d Cir. 1985), Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1069 (2d Cir. 1983); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390-91 (6th Cir. 1986)

In examining proposed post-petition business transactions, courts employ a deferential "business judgment" test. "A debtor-in-possession is accorded great deference as to its business judgments." In re Girard Medical Center, 1990 WL 56486, *2 (Bankr. E.D.Pa. 1990). *See also In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 849 (Bankr. W.D.Pa. 1987) ("courts accord the debtor's business judgment a great amount of deference").

As a debtor-in-possession, Simpco has authority to operate the business.
11 U.S.C. § 1108. The authority to operate that business necessarily includes the

1 concomitant discretion to exercise reasonable judgment in ordinary business
2 matters. The business of this debtor-in-possession includes oil and gas drilling
3 operations. Simpco's best business judgment indicates these drilling operations are
4 necessary and reasonable for the benefit of the estate. The discretion to act with
5 regard to business planning activities is at the heart of the debtor's power. In
6 exercising Simpco's business judgment of conducting its drilling operations, it has
7 found it necessary to obtain loans to make these endeavors possible. This is in
8 accordance with the exercise of its sound business discretion.

9 Business judgments should be left to the board room and not to this Court.
10 Only in circumstances where there are allegations of, and a real potential for,
11 abuse by corporate insiders should the Court scrutinize the actions of the
12 corporation. There are no allegations of insider abuse in this case.

13 In re Simasko Production Co., 47 B.R. 444, 449 (Bankr. D.Colo. 1985) (citations omitted). See
14 also In re Curlew Valley Associates, 14 B.R. 506, 513-514 (Bankr. D.Utah 1981) ("the court will
15 not entertain objections to a trustee's conduct of the estate where that conduct involves a business
16 judgment made in good faith, upon a reasonable basis, and within the scope of his authority under
17 the Code."); Frostbaum v. Ochs, 277 B.R. 470, 475 (E.D.N.Y. 2002) ("So long as this decision
18 was not made arbitrarily, or in bad faith, it was appropriate for the Bankruptcy Court to accept
19 this decision for the benefit of the estate"); In re Thinking Machs. Corp., 182 B.R. 365, 368
20 (D.Mass.) (emphasizing "the high degree of deference usually afforded purely economic
21 decisions of trustees"), *rev'd on other grounds*, 67 F.3d 1021 (1st Cir.1995); In re JFD
22 Enterprises, Inc., 215 F.3d 1312, 2000 WL 560189, *5 (1st Cir. 2000) ("the trustee's business
23 judgment is subject to great judicial deference").

24 Entering into the Assessment Contract will enable the Debtor to consummate the
25 compromise with JKO, eliminate the risks and significant costs associated with plan confirmation,
26 and pave the way for prompt emergence from Chapter 11 and provide creditors with the greatest
27 opportunity for payment. Accordingly, entering into the Assessment Contract is a proper exercise
28 of the Debtor's business judgment.

**B. The Debtor's Notice to Creditors of its Intention to Enter into the Assessment
Contract is Sufficient to Satisfy the Requirements of Section 363(b)**

The purpose of imposing on a debtor the requirement to obtain court approval for a
transaction outside the ordinary course of the debtor's business is simply to provide to creditors,
who have an interest in maximizing realization from assets of the estate, an opportunity to review

1 the terms of the transaction and to object thereto if they deem the transaction not to be in their best
2 interest. In re Crystal Apparel, 220 B.R. at 830 (citing In re Caldor, 193 B.R. 182, 186 (Bankr.
3 S.D.N.Y. 1996)). Thus, the standard for approval of a transaction not in the ordinary course of
4 business is whether creditors have had an opportunity to review the proposed transaction, and to
5 afford those creditors an opportunity to be heard in the event that those creditors believe that the
6 transaction is not in their best interests. In re James A. Phillips, Inc., 29 B.R. 391, 394 (S.D.N.Y.
7 1983) (“[T]he apparent purpose of requiring notice only where the use of property is extraordinary
8 is to assure interested persons of an opportunity to be heard concerning transactions different from
9 those that might be expected to take place so long as the debtor-in-possession is allowed to
10 continue normal business operations...”).

11 The Debtor is seeking an order allowing it to obtain financing to avoid the risk of losing
12 the Property and restructure its obligations to JKO. The proposed financing will enable the
13 Debtor to sustain its operations and continue providing ongoing nursing care to patients. Creditors
14 will receive notice of the hearing on the Motion. Therefore, the Debtor submits that such notice is
15 sufficient to meet the requirements of Section 363(b).

16 The Debtor’s entry into the Assessment Contract, which will enable the Debtor to preserve
17 its interests in the Property and continue to provide patients with nursing care, thereby providing
18 creditors with the greatest opportunity for recovery, is an exercise of the Debtor’s sound business
19 judgment. See, e.g., In re Copy Crafters Quickprinting, Inc., 92 B.R. 973, 983 (Bankr. N.D.N.Y.
20 1988); In re Industrial Valley Refrig. and Air Cond. Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D.
21 Pa. 1987) (in the commonly considered context of the sale of business assets under section 363(b),
22 noting that a “sound business judgment” must justify the transaction). See also In re Levinson
23 Steel Co., 117 B.R. 194, 196 (W.D. Pa. 1990) (approving severance pay plan as “necessary
24 incentive for continued employment” by certain of the debtor’s employees). Accordingly, with
25 the notice given to creditors set forth above, this Court should authorize the Debtor to enter into
26 the Assessment Contract.

C. **To the Extent Court Approval is Necessary, the Debtor's GP should be Authorized to Amend the Debtor's Limited Partnership Agreement and the GP Operating Agreement to Comply with Certain Requirements of the DIP Lender.**

The DIP Lender has required that the Debtor's Limited Partnership Agreement and the GP's Operating Agreement to be amended as follows:

- Pursuant to Article 4(a) of the Debtor's Limited Partnership Agreement, the term of the partnership "shall continue until December 31, 2044..." The DIP Lender has required that the term of the partnership should be extended for an additional 30 years, through and included December 31, 2074.

- The *Operating Agreement of Global Premier America #3, LLC, A California Limited Liability Company* (inclusive of amendments thereto, the "GP Operating Agreement") currently prohibits the GP from authorizing the Debtor to incur further "indebtedness or liabilities." The GP Operating Agreement therefore needs to be amended to permit the DIP Financing.

Pursuant to Article 17 of the Debtor's Limited Partnership Agreement, the General Partner has the authority to amend such agreement in order to comply with requests made by a lender, subject to certain exceptions not relevant here.

[T]he General Partner shall have the authority to amend this Agreement without any vote or other action by the Limited Partners; ... (y) to make any changes requested by a lender that are requested or required to obtain financing or add or delete any such provisions after repayment of any such loans provided that the adoption of such amendment (i) is for the benefit of and not adverse to the interests of the Limited Partners; (ii) is not inconsistent with provisions of this Agreement pertaining to the management and administration of the Partnership by the General Partner; and (iii) does not affect the limited liability of the Limited Partners or the status of the Partnership as a partnership for Federal income tax purposes.

The Debtor believes that amending the Limited Partnership Agreement does not require court approval. Courts have generally recognized that shares or equity interests in the debtor is not property of the estate, and thus the exercise of corporate governance rights does not implicate Section 362 or 363. See e.g., In re Marvel Entm't Grp., Inc., 209 B.R. 832 (D. Del. 1997) ("[T]he

1 automatic stay provisions of the Bankruptcy Code are not implicated by the exercise of
2 shareholders' governance rights.”); In re American Media Distribs., LLC, 216 B.R. 486, 489
3 (E.D.N.Y.1998) (“Like those of ordinary corporate shareholders, their rights to participate in the
4 governance of the business in which they hold equity interests are neither enjoined automatically
5 nor abrogated upon the filing of a bankruptcy petition.”); In re Johns–Manville Corp., 801 F.2d
6 60, 64 (2d Cir.1986) (“[T]he shareholders' right to govern their corporation[is] a prerogative
7 ordinarily uncompromised by reorganization”); Pesmen v. Bannockburn Lake Office Plaza
8 Associates Ltd. Partnership I, 1999 WL 356307, at *4 (N.D.Ill. 1999) (“an automatic stay
9 generally does not affect governance issues”); 2 Bankruptcy Litigation § 12:5.60 (2022) (“The
10 automatic stay does not strip directors, shareholders, partners or members of their rights of
11 governance with respect to a corporate or partnership debtor.”).

12 Accordingly, as an exercise of governance rights, the Debtor does not believe that the
13 proposed amendments to the Limited Partnership Agreement or the GP Operating Agreement
14 requires court approval. However, in an abundance of caution and as a matter of disclosure, the
15 Debtor requests, to the extent Court approval is necessary, an order authorizing the GP to amend
16 the Debtor’s Limited Partnership Agreement and its Operating Agreement in order to comply
17 with the requirements of the DIP Lender.

18 IV.

19 **THIS COURT MAY APPROVE AND AUTHORIZE THE DEBTOR TO ENTER** 20 **INTO A POST-PETITION SECURED FINANCING ARRANGEMENT**

21 A. **The Bankruptcy Code Authorizes the Debtor to Obtain Secured Financing**

22 Section 364 of the Bankruptcy Code empowers the Court to authorize the Debtor to incur
23 debt secured by a lien on property of the estate. In particular, Bankruptcy Code section 364
24 provides, in pertinent part:

25 (d) (1) The Court, after notice and a hearing, may authorize the obtaining of
26 credit or the incurring of debt secured by a senior or equal lien on property of
27 the estate that is subject to a lien only if –

28 (A) the trustee is unable to obtain such credit otherwise; and

1 (B) there is adequate protection of the interest of the holder of the lien
2 on the property of the estate on which such senior or equal lien is
proposed to be granted.

3 A debtor may obtain financing under Section 364(d) when the following two criteria are
4 met: (1) the debtor cannot obtain credit by another means; and (2) adequate protection is provided
5 for the interest of the holder of the lien on the property of the estate on which such senior lien is
6 proposed to be granted. In this case, the Debtor seeks to obtain approval of financing pursuant to
7 the PACE program that, pursuant to Section 8500, et. Seq. of the California Streets and Highways
8 Code, statutorily provides for the priming of liens held by senior secured creditors, but limits
9 collection to the amount of an Assessment due and in default. The Debtor submits that the facts
10 and circumstances of this case justify approval of the priming of liens. In addition, JKO, the senior
11 secured creditor in this case, has already consented to the approval of this loan.¹

12 **B. California Law Provides the CSCDA with a Lien Senior to Pre-Existing**
13 **Private Liens for Loans Made Pursuant to Contractual Assessments**

14 Contractual assessments are given senior lien rights over pre-existing private liens.
15 Section 5898.30 of Chapter 29 states:

16 Assessments levied pursuant to this chapter, and the interest and any
17 penalties thereon shall constitute a lien against the lots and parcels of land
18 on which they are made, until they are paid. Division 10 (commencing with
19 Section 8500), insofar as those provisions are not in conflict with this
20 chapter, Article 13 (commencing with Section 53930) of, and Article 13.5
21 (commencing with Section 53938) of, Chapter 4 of Part 1 of Division 2 of
Title 5 of the Government Code apply to the imposition and collection of
assessments contracted for pursuant to this chapter, including, but not
limited to, provisions related to lien priority, the collection of assessments in
the same manner and at the same time as the general taxes of the city or

22
23 ¹ The Debtor is relieved of any obligation to establish adequate protection of a secured creditor's interest
24 under Section 364(d), where such secured creditor consents or otherwise fails to oppose the Motion. See
25 Anchor Sav. Bank FSB v. Sky Valley, Inc., 99 B.R. 117, 122 (N.D.Ga. 1989) (“[B]y tacitly consenting to
26 the superpriority lien, those creditors relieved the debtor of having to demonstrate that they were adequately
27 protected.”); Bland v. Farmworker Creditors, 308 B.R. 109, 113 (S.D. Ga. 2003) quoting 2C Bankr. Service
28 L.Ed. § 20:380 (Nov.2003) (“Undersecured lienholders, by tacitly consenting to superpriority lien by either
not objecting or withdrawing their objections to superpriority financing under 11 U.S.C.A. § 364(d),
relieved debtor of having to demonstrate that they were adequately protected.”); James Buchwalter,
Construction and Application of Bankruptcy "Superpriority Lien" or "Priming Lien" Provision, 11 U.S.C.A.
§ 364(d), 63 A.L.R. Fed. 2d 563 (2012) (“Undersecured creditors may relieve the debtor of having to
demonstrate that they were adequately protected by tacitly consenting to a superpriority lien that the debtor
seeks under 11 U.S.C.A. § 364(d).”).

1 county on real property, unless another procedure has been authorized by
2 the legislative body or by statute, and any penalties and remedies in the
event of delinquency and default.

3 Article 13.5 (commencing with Section 53938) of Chapter 4 of Part 1 of Division 2 of
4 Title 5 of the Government Code (the “Lien Priority Law”), which is cross-referenced in Section
5 5898.30, was adopted by the Legislature to make uniform the priority of special assessment liens
6 and is controlling over other applicable general and special laws. Most importantly, Section 53935
7 of the Lien Priority Law provides as follows:

8 The lien of said assessments shall be coequal to and independent of the lien for
9 general taxes, and, except as provided in Section 53936, not subject to
extinguishment by the sale of the property on account of the nonpayment of
10 any taxes, and prior and superior to all liens, claims and encumbrances except
11 (a) the lien for general taxes or ad valorem assessments in the nature of and
collected as taxes levied by the state or any county, city, special district or
12 other local agency; (b) the lien of any special assessment or assessments the
lien date of which is prior in time to the lien date of the assessment for which
13 the deed is issued; (c) easements constituting servitudes upon or burdens to
said lands; (d) water rights, the record title to which is held separately from the
14 title to said lands; (e) restrictions of record.

15 Revenue & Taxation Code Section 2192.1 provides with respect to taxes and assessments
16 in general: “Every tax declared in this chapter to be a lien on real property, and every public
17 improvement assessment declared by law to be a lien on real property, have priority over all other
18 liens on the property, regardless of the time of their creation. Any tax or assessment described in
19 the preceding sentence shall be given priority over matters including, but not limited to, any
20 recognizance, deed, judgment, debt, obligation, or responsibility with respect to which the subject
real property may become charged or liable.”

21 The fact that Chapter 29 calls for the levy of senior lien assessments to finance privately-
22 owned improvements for public purposes is not a dramatic departure from existing California law.
23 See the Improvement Act of 1911,¹ the Municipal Improvement Act of 1913,² the Mello-Roos
24

25
26
27 ¹ The Improvement Act of 1911 authorizes the levy of special assessments to finance, among other things,
improvements on private property to prevent, mitigate, abate or control geologic hazards. Streets & Highways Code
§5105.

28 ² The Municipal Improvement Act of 1913 authorizes the levy of special assessments to finance, among other things,
seismic- and fire safety-related improvements on private property. Streets & Highways Code §§10100.2, 10100.3.

Community Facilities Act of 1982¹ and Public Resources Code Section 26500 et seq. relating to
Geologic Hazard Abatement Districts.²

Chapter 29 allows the levy of contractual assessments to advance the public purposes set
forth in Section 5898.14 of Chapter 29:

(a) The Legislature finds all of the following: (1) Energy and water conservation efforts, including the promotion of energy efficiency improvements to residential, commercial, industrial, agricultural, or other real property are necessary to address the issue of global climate change. (2) The upfront cost of making residential, commercial, industrial, agricultural, or other real property more energy and water efficient prevents many property owners from making those improvements. To make those improvements more affordable and to promote the installation of those improvements, it is necessary to authorize an alternative procedure for authorizing assessments to finance the cost of energy and water efficiency improvements.

The power of states and political subdivisions to levy taxes and assessments to achieve public purposes is a fundamental and long-standing principle of law in the United States. Ainsworth v. Bryant (1949), 34 Cal.2d 465 (quoting U.S. v. City of New Orleans (1878) 98 U.S. 381 (“A municipality without the power of taxation would be a body without life, incapable of acting, and serving no useful purpose....”)).

California courts have concluded that public purpose may be broadly defined by legislative bodies, and California courts defer to legislative bodies in their declaration of public purpose. Daggett v. Colgan (1891) 92 Cal.53; Bank v. Bell (1923) 62 Cal.App. 320.

The fact that taxes and assessments are secured by a senior lien is also a fundamental and long-standing principle of law in the United States. Provident Institution for Savings in Jersey City v. Mayor and Alderman of Jersey City (1885) 113 U.S. 506 (“That which is given for the

¹ The Mello-Roos Community Facilities Act of 1982 authorizes the levy of special taxes to finance a variety of privately owned improvements, namely (i) work to private property in order to bring it into compliance with seismic safety standards or regulations, or to repair earthquake damage (Gov. Code §53313.5(i)) and (ii) repair and abatement of damage caused to private property by soil deterioration (Gov. Code §53313.5(j)).

² This law authorizes a geologic hazard abatement district, which is a separate political subdivision of the State, to acquire, construct, operate, manage and maintain improvements on private or public lands, and authorizes it to make improvements to public or private structures where the legislative body determines that it is in the public interest to do so, and authorizes the levy of special assessments to finance such work. (b) The Legislature declares that a public purpose will be served by a voluntary contractual assessment program that provides the legislative body of any public agency with the authority to finance the installation of distributed generation renewable energy sources and energy or water efficiency improvements that are permanently fixed to residential, commercial, industrial, agricultural, or other real property.

1 preservation or betterment of the common pledge is in natural equity fairly entitled to the first
2 rank in the tableau of claims.”); German Savings & Loan Soc’y v. Ramish (1902) 138 Cal 120
3 (“The power to levy a tax for general purposes, which shall be a lien superior to all other liens,
4 prior or otherwise, is not doubted, and it is not because it is called a tax, but because of its object
5 and the necessity for raising revenue in order to execute the functions of government.”);
6 Redevelopment Agency of the City and County of San Francisco v. Pacific Vegetable Oil Corp.
7 (1966) 241 Cal. App.2d 606 (citing Revenue & Taxation Code §2192.1; “... by virtue of
8 legislative enactment..., tax liens are given priority in California over private contract or mortgage
9 liens....”).

10 Both California and federal courts have upheld later-in-time senior tax and assessment
11 liens in the face of procedural and substantive constitutional due process challenges by the owners
12 of a variety of subordinate property rights. *See* Hollenbeck-Bush Planing Mill Co. v. Amweg
13 (1917) 177 Cal. 159; *Provident Institution for Savings in Jersey City v. Mayor and Alderman of*
14 Jersey City (1885) 113 U.S. 506 (holding that legislative acts giving preference to liens over those
15 already created by mortgage, judgment or attachment do not violate the United States
16 Constitution); German Savings & Loan Soc’y v. Ramish (1902) 138 Cal. 120, 125 (upholding
17 assessment law under fourteenth amendment of the federal constitution). *See also* Dressman v.
18 Farmers’ & Traders National Bank of Covington (1897) 38 S.W. 1052 [cited with approval by
19 O’Dea v. Mitchell (1904) 144 Cal. 374]: “In creating liens for improvement assessments, the
20 legislature makes secure compensation for what is, in truth, an industrial annexation of the land,
21 for the street improved is, in a sense, an appurtenance of the land which increases its value; and
22 whoever holds an interest in the land profits by the appurtenance, and ought, in justice, to be
23 subjected to the lien which secures the assessment. It is for these reasons often proper to deduce
24 ... the conclusion that it gives a paramount lien to which mortgage estates or judgment liens must
25 yield.” (Internal citations omitted).

26 Based on the foregoing, the DIP Lender is entitled to a lien against the Debtor’s Property
27 securing the Assessment Obligations and to sell Debtor’s Property in accordance with California
28 law to collect any Assessment Obligations that become delinquent and remain unpaid.

V.

DIP LENDER IS ENTITLED TO A GOOD FAITH

DETERMINATION PURSUANT TO SECTIONS 364(e)

Section 364(e) of the Bankruptcy Code provides that entities that extend credit in good faith are entitled to certain protections, as follows:

(e) The reversal or modification on appeal of an authorization under this section to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

11 U.S.C. § 364(e).

The purpose of Section 364(e) is to overcome a good faith lender's reluctance to extend financing in a bankruptcy context by permitting reliance on a bankruptcy judge's authorization. In re Cooper Commons, LLC, 430 F.3d 1215, 1219 (9th Cir. 2005) (citing Matter of EDC Holding Co., 676 F.2d 945, 947 (7th Cir.1982)).

“[T]o determine good faith we look to the integrity of an actor's conduct during the proceedings. Misconduct defeating good faith includes fraud, collusion, or an attempt to take grossly unfair advantage of others. A creditor fails to act in good faith if it acts for an improper purpose. Knowledge of the illegality of a transaction also defeats good faith.” In re Adam's Apple, 829 F.2d 1484, 1489 (9th Cir. 1987) (citations and internal marks of quotation omitted). Importantly, Adams Apple establishes that the Court presume the post-bankruptcy creditor's good faith and then inquire to see whether the presumption can be overcome. Id. at 1490-91. See also In re Cooper Commons, LLC, 424 F.3d 963, 969 (9th Cir. 2005) (opinion amended and superseded by 430 F.3d 1215, 1219 (9th Cir. 2005)).

Applying the standards set forth in Adams Apple and the question of good faith, this Court should find that the DIP Lender is a good faith lender. There is no fraud, collusion, self-dealing nor any attempt to take grossly unfair advantage of others. The proposed DIP Financing is not illegal, nor is there any improper purpose. In fact, the proposed financing was designed by the

1 state of California for the very purpose for which the Debtor seeks and has already been qualified.
2 The proposed DIP Financing was negotiated at arm's-length by the parties, each of which was
3 represented by counsel. Based on the foregoing, the DIP Lender should be entitled to a good faith
4 finding in accordance with Sections 364(e) of the Bankruptcy Code.

5 **VI.**

6 **THE COURT SHOULD DESIGNATE CHRISTINE HANNA AS THE PERSON IN**
7 **CONTROL OF THE DEBTOR PURSUANT TO 11 U.S.C. § 1107(a) AND F.R.B.P. 9001(5)**

8 By this Motion, the Debtor further requests an order designating Christine Hanna as the
9 person in control of the Debtor who is authorized to act on behalf of the Debtor, pursuant to 11
10 U.S.C. § 1107(a) and F.R.B.P. 9001(5), and in particular, authorizing Christina Christine Hanna on
11 behalf of the Debtor to execute and deliver the Assessment Contract and all such other documents
12 and to perform such other and further acts as may be necessary or desirable in connection with the
13 Assessment Contract and the closing of the DIP Financing pursuant thereto.

14 Bankruptcy Rule 9001(5) provides that, where the debtor is not a natural person, the
15 Bankruptcy Court can designate a particular officer, partner or other person in control, to act on
16 behalf of such debtor:

17 When any act is required by these rules to be performed by a debtor ... and the
18 debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes,
19 **if designated by the court**, any or all of its officers, members of its board of
20 directors or trustees or of a similar controlling body, a controlling stockholder or
21 member, or any other person in control; (B) if the debtor is a partnership, "debtor"
22 includes any or all of its general partners or, **if designated by the court**, any other
23 person in control.

24 F.R.B.P. 9001(5) (emphasis added). See also 11 U.S.C. § 1107(a) (debtor in possession has
25 virtually all of the rights, powers and duties of a trustee subject to "such limitations or conditions
26 as the court prescribes").

27 Case law has consistently interpreted Bankruptcy Rule 9001(5) and Section 1107(a) to
28 authorize the Bankruptcy Court to designate a particular individual to control and act on behalf of
a corporate or partnership-debtor. "This rule permits this court to designate an individual as the
person in control of a corporation." In re Continuum Care Services, Inc., 375 B.R. 692, 694

(Bankr.S.D.Fla. 2007). See also In re Derivium Capital, LLC, 2010 WL 11719990, at *3 (Bankr.D.S.C. 2010) (“The Court has the authority to designate [individual member of debtor-LLC] as the representative of Debtor pursuant to Fed. R. Bankr. P. 9001(5)...”); In re Iorizzo, 35 B.R. 465, 467 (Bankr.E.D.N.Y. 1983) (“In cases where a debtor is a corporation, the Bankruptcy Rules provide that the Court may designate officers, directors, trustees or other controlling bodies to be considered the debtor for this and similar purposes.”). See also Bankr. Proc. Manual § 9001:1 (2023 ed.) (“[F.R.B.P. 9001(5)] allows the court to designate officers, partners, etc., to act on behalf of a debtor that is not a natural person.”); Chou, Corporate Governance in Chapter 11, 65 Am. Bankr. L.J. 559, 577 (1991) (“This rule [9001(5)] recognizes that the corporation, an artificial person, cannot by itself implement the rules and operate the business. Management or controlling persons designated by a bankruptcy court are to perform particular acts required by the rules.”)

As stated in the treatise, Collier on Bankruptcy, Rule 9001(5) authorizes the court to “appoint” an individual to perform the duties on behalf of the corporate or partnership debtor:

[I]f the debtor is not a natural person but is a corporation or a partnership (both of which are included in the definition of “person”), **the court may appoint one or more individuals to perform the duties** imposed upon the debtor by these and other rules. If the debtor is a corporation, the debtor includes, if designated by the court, one or more of “any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control.” If the debtor is a partnership, the “debtor” includes any or all of its general partners or, if designated by the court, any other person in control.

10 Collier on Bankruptcy ¶ 9001.06 (16th 2023) (emphasis added) (footnotes omitted).

Courts have also recognized that the person designated to act on behalf of the debtor need not be someone with a formal title as an officer, shareholder or partner. See In re Northwest Associates, Inc., 245 B.R. 183, 186 (Bankr.E.D.N.Y. 1999) (“it is clear that a court can look beyond an individual's formal title with the Debtor corporation (or lack of formal title) to make a determination if a party is in control of a corporation based on the party's duties and responsibilities vis-a-vis the Debtor.”); Matter of Gaslight Club, Inc., 782 F.2d 767, 771 fn. 6 (7th Cir. 1986) (observing that Rule 9001(5) “anticipates that a person performing the duties of debtor in possession need not be an officer, director or controlling shareholder” but rather can be “any

1 other person in control”).

2 As set forth in the Hanna Declaration, Global Premier America #3, LLC (“GP”) is the
3 general partner of the Debtor and has complete control over the decision making of the Debtor.
4 Pursuant to the GP’s Operating Agreement and amendments thereto, the Managers of the GP,
5 which are defined as Christine Hanna and Andrew Hanna, together or separately, each have full
6 authority to manage and operate the GP.¹ Thus, Christine Hanna has authority to manage and
7 operate the GP, and thus, manage and operate the Debtor. In practice, Christine Hanna has and
8 continues to be the “person in control” of the Debtor. Accordingly, Christine Hanna had authority
9 to file, on behalf of the Debtor, a petition for relief under Chapter 11 of the Bankruptcy Code,
10 enter into the proposed DIP Financing, and file this Motion.

11 The parties have requested confirmation of Christine Hanna’s authority to act on behalf of
12 the Debtor. Accordingly, the Debtor requests that Christine Hanna be formally designated as the
13 person who is authorized to act on behalf of the Debtor, pursuant to 11 U.S.C. § 1107(a) and
14 F.R.B.P. 9001(5), and in particular, authorizing Christina Christine Hanna to execute and deliver
15 the Assessment Contract and all such other documents and to perform such other and further acts
16 in connection with the Assessment Contract and the closing of the DIP Financing.

17 **VII.**

18 **CONCLUSION**

19 Based on the foregoing, the Debtor respectfully requests that the Court grant the relief
20 requested herein.

21 DATED: July 24, 2023

WINTHROP GOLUBOW HOLLANDER, LLP

23 By: /s/ Garrick A. Hollander

24 Garrick A. Hollander

25 Peter W. Lianides

26 General Insolvency Counsel for

Debtor and Debtor-in-Possession

27 _____
28 ¹ See, for example, sections 1.7 and 2(e) of the First Amendment to Operating Agreement of Global Premier America #3, LLC. A true and correct copy of the GP’s Operating Agreement and amendment thereto are attached collectively as **Exhibit 4** to the Hanna Declaration.

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 1301 Dove Street Suite 500, Newport Beach, CA 92660.

A true and correct copy of the foregoing document entitled: **DEBTOR'S MOTION FOR ORDER AUTHORIZING DEBTOR TO ENTER INTO ASSESSMENT CONTRACT AND OBTAIN POST-PETITION LOAN SECURED AGAINST REAL PROPERTY; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CHRISTINE HANNA IN SUPPORT HEREOF FILED CONCURRENTLY HERewith** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On **July 24, 2023**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Michael J Conway** - MConway@gbllawllp.com, msingleman@gbllawllp.com; rsoll@gbllawllp.com
- **James R Felton** - jfelton@gbllawllp.com, pstruntz@gbllawllp.com; msingleman@gbllawllp.com
- **Brian David Fittipaldi** - brian.fittipaldi@usdoj.gov
- **Garrick A Hollander** - ghollander@wghlawyers.com, jmartinez@wghlawyers.com; svillegas@wghlawyers.com
- **Mike D Neue** - m.neue@geracillp.com, a.lewis@geracillp.com
- **Jeremy H Rothstein** - jrothstein@gbllawllp.com, msingleman@gbllawllp.com; rsoll@gbllawllp.com
- **Matthew J Stockl** - mstockl@wghlawyers.com, jmartinez@wghlawyers.com; svillegas@wghlawyers.com
- **United States Trustee (ND)** - ustpreion16.nd.ecf@usdoj.gov

2. SERVED BY UNITED STATES MAIL: On **July 24, 2023**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE LIST

3. SERVED BY OVERNIGHT MAIL, (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

July 24, 2023	Silvia Villegas	/s/ Silvia Villegas
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

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